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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/601,088 | 06/20/2003 | Joseph W. Lovette | 00124-00992-US | 6101 |
| 23416 | 7590 | 12/14/2004 | EXAMINER | |
| CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899 | | | COONEY, JOHN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1711 | |

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,088

Applicant(s)

LOVETTE, JOSEPH W.

Examiner

John m Cooney

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0603.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishida et al.(6,136,879) in view of Fracalossi et al.(4,621,106).

Nishida et al. discloses preparations of flexible polyurethane foams, wherein polyether polyols, inclusively in admixture with polyester polyols, are combined with isocyanate components at isocyanate indexes as claimed in appropriate molds in the presence of water as a blowing agent, crosslinkers, and additives (see column 13 lines 27 – column 18 line 29, as well as, the entire document).

Nishida et al. differs from applicant's claims in that water in the amount specified by the claims is not specifically required. However, Nishida et al. (see column 17 lines 12-24) indicates variability in the amounts of water utilized for the purpose of controlling densities. Accordingly, it would have been obvious for one having ordinary skill in the art to have reduced water employment within the processing operations of Nishida et al. for the purpose of increasing densities of the obtained foams in order to arrive at the products and/or processes of applicant's claims with the expectation of success in the absence of a showing of new or unexpected results. All disclosures of the prior art,

Art Unit: 1711

including unpreferred or auxiliary embodiments, must be considered in determining obviousness. In re Mills, 176 USPQ; In re Lamberti, 192 USPQ 278; In re Boe, 148 USPQ 507.

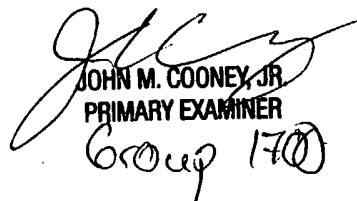
Nishida et al. differs from applicant's claims in that anti-static additives are not explicitly identified as additives they are particularly concerned with utilizing. However, Fracalossi et al. (column 2 lines 42-55, as well as, the entire document) discloses the employment of anti-static additives in polyester based polyurethane foams for the purpose of imparting surface resistivity to the articles realized. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the anti-static additives of Fracalossi et al. in the preparations of Nishida et al. for the purpose of imparting their anti-static and surface resistance reducing effect in order to arrive at the products and/or processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kageoka et al. is cited for its disclosure of relevant polyester/polyether polyol in the relevant art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN M. COONEY, JR.
PRIMARY EXAMINER
Group 1700